

### **REMARKS**

Applicants have herein canceled claims 2-10, 12-16, 20, 21 and 24 without prejudice or disclaimer. Applicants reserve the right to pursue the subject matter encompassed by all canceled claims in one or more continuing applications. Additionally, new claims 25-120 have been added herein to expand the embodiments of the provisionally elected subject matter.

Support for new claims 25-120 can be found throughout the specification as filed, for example, at paragraph nos. 19 (isolated antibodies that bind specifically to CRCGCL polypeptides), 107 (ELISA and western blot assays), 112 (polypeptide fragments of 30 and/or 50 amino acid residues), 150 (polyclonal, monoclonal, human, humanized or chimeric antibodies, single chain antibodies, Fab fragments, and F(ab') fragments), 167 (glycosylation), 169 and 170 (hybridomas and cells that produce antibodies). Thus, no new matter has been added.

Upon entry of the present amendments, claims 1, 11, 17-19, 22, 23 and 25-120 will be pending.

### ***Provisional Election With Traverse***

The Examiner has issued an election requirement separating pending claims 1-24 into eight different groups. To comply with the pending election requirement, Applicants herein provisionally elect, *with traverse*, the claims currently restricted to Group III (*i.e.*, claim 13), directed to antibodies. Applicants respectfully traverse the present election requirement.

Applicants point out, that even where patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden". (*See* M.P.E.P. § 803.) In the present situation, the Examiner has failed to make such a showing.

Applicants submit that a search of polynucleotide claims of the invention would provide useful information for examining claims directed to both polynucleotides and the polypeptides encoded by these polynucleotides. In certain of the claims this is especially true because the polynucleotide sequence of these claims is defined in part by the

polypeptide that the polynucleotide sequence encodes. Further, Applicants point out that, in many if not most publications, where a published nucleotide sequence is an open reading frame, the authors also include, as a matter of routine, the deduced amino acid sequence of the encoded polypeptide (*see*, for example, Figure 1 in Tonozyuka *et al.* submitted herewith as reference O).

Similarly, a search of the polypeptide claims of the invention would clearly provide useful information for the examination of claims directed to antibodies either produced in response to or having affinity for the subject polypeptides. This is because antibodies are frequently defined by the antigens that they are produced in response to and the epitopes to which they bind. Moreover, in many publications where an antibody is described, the antigen that it was produced in response to is also described.

Further, searches of publications directed to polynucleotides and the use of those polynucleotides would clearly be overlapping. This is so because in many, if not most, publications that describe polynucleotides, these molecules are described by their function, characterization and/or expression profile. Thus, a search of polynucleotide claims would also provide the Examiner with art directed to the manner in which the claimed polynucleotides could be used in diagnostic and therapeutic indications.

Further, searches of publications directed to polypeptides and the use of those polypeptides would clearly be overlapping. This is so because in many, if not most, publications that describe polypeptides, these molecules are described by their function. Thus, a search of polypeptide claims would also provide the Examiner with art directed to the manner in which the claimed polypeptides could be used to diagnose or treat disease states.

In view of the above, Applicants submit that the searches for polynucleotides, polypeptides, antibodies, and methods of using the polynucleotides and proteins of the subject invention would clearly be overlapping. Accordingly, Applicants request that the Examiner reconsider and withdraw the restriction requirement and examine the subject matter of Groups I-VIII together in the present application.

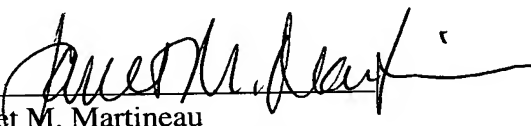
Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

### ***Conclusion***

Applicants respectfully request that the above-made remarks be entered and made of record in the file history of the instant application. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should also be charged to our Deposit Account.

Dated: September 25, 2003 Respectfully submitted,

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